

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Finance and Tax

BILL: CS/SB 272

INTRODUCER: Community Affairs Committee and Senator Brandes

SUBJECT: Local Tax Referenda

DATE: January 12, 2018 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
2.	<u>Fournier</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 272 provides that a referendum to adopt or amend a local option discretionary sales surtax which is held at any date other than a general election requires the approval of at least 60 percent of the electors voting on the ballot question. If the referendum is held at a general election, only a simple majority is required.

II. Present Situation:

Discretionary Sales Surtax

The Florida Constitution preempts all forms of taxation to the state, except for ad valorem taxes on real estate and tangible personal property, unless otherwise provided by general law.¹ Counties have limited authority to levy discretionary sales surtaxes on transactions subject to state sales tax.^{2,3} The Legislature has authorized the following local option discretionary sales surtaxes:

- Charter County and Regional Transportation System Surtax, for operating a transportation system in a charter county, a county which is consolidated with that of one or more municipalities, or a county that is within or under an interlocal agreement with a regional transportation or transit authority.⁴

¹ Art. VII, s. 1(a), Fla. Const.

² Sections 212.054 and 212.055, F.S.

³ Surtaxes only apply to the first \$5,000 of a taxable transaction pursuant to s. 212.054(2)(b)1, F.S.

⁴ Section 212.055(1), F.S.

- Local Government Infrastructure Surtax, for financing local government infrastructure projects.⁵
- Small County Surtax, providing additional revenue for counties having fewer than 50,000 residents as of April 1, 1992.⁶
- Indigent Care and Trauma Center Surtax, for providing medical care for indigent persons (in non-consolidated counties having a population of at least 800,000) and funding trauma centers (in non-consolidated counties having a population less than 800,000).⁷
- County Public Hospital Surtax, for operating, maintaining, and administering a county public general hospital in a county as defined in s. 125.011(1), F.S. (i.e., Miami-Dade County).⁸
- School Capital Outlay Surtax, for constructing and renovating schools.⁹
- Voter-Approved Indigent Care Surtax, for providing medical care for indigent persons in counties with a population less than 800,000.¹⁰
- Emergency Fire Rescue Services and Facilities Surtax, for providing emergency fire rescue services and facilities.¹¹
- Pension Liability Surtax for funding pension liability shortfalls.¹²

Local discretionary sales surtaxes are collected by the Department of Revenue (DOR) using the same procedures used for the administration, collection, and enforcement of the general state sales tax.¹³ DOR places these funds into the Discretionary Sales Surtax Clearing Trust Fund. A separate account is established for each county imposing a discretionary surtax. The proceeds of the surtax are distributed to the county on a monthly basis, minus an administrative fee of the lesser of three percent or administrative costs solely and directly attributable to the surtax. Each county is liable for its prorated share of administrative costs, based on its prorated share of the amount collected statewide.¹⁴

New surtaxes and rate changes to existing surtaxes take effect on January 1, while the repeal of an existing surtax takes effect on December 31.¹⁵ The governing body of the county or the school district must notify DOR of the imposition, termination, or rate change of a discretionary sales surtax within 10 days of final adoption by ordinance or referendum, but no later than November 16. The notification must include the duration of the surtax, the surtax rate, a copy of the ordinance, and any additional information DOR requires by rule.¹⁶ If the county or school district fails to provide timely notice, the effective date of the change is delayed by 1 year.¹⁷ Counties and school districts are also required to notify DOR if a referendum or consideration of an ordinance to impose, terminate, or change the rate of a surtax is to occur after October 1.¹⁸

⁵ Section 212.055(2), F.S.

⁶ Section 212.055(3), F.S.

⁷ Section 212.055(4), F.S.

⁸ Section 212.055(5), F.S.

⁹ Section 212.055(6), F.S.

¹⁰ Section 212.055(7), F.S.

¹¹ Section 212.055(8), F.S.

¹² Section 212.055(9), F.S.

¹³ Section 212.054(4)(a), F.S.

¹⁴ Section 212.054(4)(b), F.S.

¹⁵ Section 212.054(5), F.S.

¹⁶ Section 212.054(7)(a), F.S.

¹⁷ *Id.*

¹⁸ Section 212.054(7)(b), F.S. The deadline for this notification is October 1.

The 49 counties and 16 school districts levying one or more discretionary sales surtaxes were projected to realize \$2.35 billion in revenue in fiscal year 2016-17.¹⁹ If all counties and school districts levied discretionary sales surtaxes at the maximum possible rates, they would have been projected to raise \$11.68 billion in revenue in fiscal year 2016-17.²⁰

Most local discretionary sales surtaxes may be approved only by referendum, while some may be approved by an extraordinary vote of the county commission.²¹ For those requiring voter approval, the referendum must be approved by a majority of electors voting.²² Except for the emergency fire rescue services and facilities surtax, the date of the referendum is at the discretion of the county commission.²³

Referendum Process

The Florida Election Code provides the general requirements for a referendum.²⁴ The question presented to voters must contain a ballot summary with clear and unambiguous language, such that a “yes” or “no” vote on the measure indicates approval or rejection, respectively.²⁵ The ballot summary should explain the chief purpose of the measure and may not exceed 75 words.²⁶ The ballot summary and title must be included in the resolution or ordinance calling for the referendum.²⁷ For some discretionary sales surtaxes, the form of the ballot question is specified by statute.²⁸

Five types of elections exist under the Election Code: primary elections, special primary elections, special elections, general elections, and presidential preference primary elections.²⁹ A “general election” is held on the first Tuesday after the first Monday in November in even-numbered years to fill national, state, county, and district offices, and for voting on constitutional amendments.³⁰

¹⁹ *2017 Florida Tax Handbook*, Office of Economic and Demographic Research, p. 220, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2017.pdf> (last visited Oct. 16, 2017).

²⁰ *2016 Local Government Financial Information Handbook*, Office of Economic and Demographic Research, p. 150, available at <http://edr.state.fl.us/Content/local-government/reports/lgfih16.pdf> (last visited Oct. 16, 2017).

²¹ See generally s. 212.055, F.S., but see s. 212.055(3), F.S. (small county surtax may be approved by extraordinary vote of the county commission, as long as surtax revenues are not used for servicing bond indebtedness), s. 212.055(4), F.S. (indigent care and trauma center surtax may be approved by extraordinary vote of the county commission), and s. 212.055(5), F.S. (county public hospital surtax may be approved by extraordinary vote of the county commission).

²² Section 212.055, F.S.

²³ E.g. s. 212.055(1)(c), F.S. (referendum for charter county and regional transportation system to be held at a time “set at the discretion of the governing body”); but see s. 212.055(8)(b), F.S. (referendum for emergency fire rescue services and facilities surtax must be placed on the ballot of a “regularly scheduled election”).

²⁴ Section 101.161, F.S.

²⁵ Section 101.161(1), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ See s. 212.055(4)(b)1., F.S. (ballot question for discretionary sales surtax for trauma centers).

²⁹ Section 97.021(11), F.S.

³⁰ Art. VI, s. 5(a), Fla. Const. (also codified as s. 97.021(16), F.S.).

III. Effect of Proposed Changes:

Section 1 amends s. 212.055, F.S., to provide that a referendum to adopt or amend a local government discretionary sales surtax, which is held at any date other than a general election, requires the approval of at least 60 percent of the electors voting on the ballot question. As in current law, a referendum to adopt or amend a local government discretionary sales surtax that is held at a general election requires the approval of a majority of the electors voting on the ballot question.

Section 2 provides that the act takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection 18(b) of article VII of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote of the membership, may not enact a general law if the anticipated effect of doing so would be to reduce the *authority* that counties or municipalities have to raise revenues in the aggregate.

In 1991, Senate President Margolis and House Speaker Wetherell released a memorandum to guide the House and Senate in the review of local government mandates. In the memorandum, the guidelines define the term “authority” to mean the power to levy a tax; the vote required to levy the tax, e.g., increasing the required vote from majority to majority plus one; the tax rate which can be levied; and the base against which the tax is levied, e.g., a bill providing a sales tax exemption should be considered a reduction in authority because counties have authority to levy local option sales taxes against the state sales tax base.

The bill requires a vote of at least 60 percent of the electors voting in a referendum to adopt or amend a local discretionary sales surtax at a date other than a general election. The bill appears to reduce the “*authority*” that counties or municipalities have to raise revenues in the aggregate. The bill does not appear to qualify under any exemption or exception. If the bill qualifies as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.055 of the Florida Statutes.

IX. Additional Information:A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Community Affairs Committee on October 24, 2017:**

Removes a provision that required a municipality to attain a vote of at least 60 percent of the governing body of the municipality in order to increase the millage rate of ad valorem taxes levied on real and tangible personal property within the municipality.

B. Amendments:

None.